Supreme Court, U. S.
FILED
MAY 25 1976

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1321

WILLIAM E. CRAWFORD, and FRANCES B. CRAWFORD, his wife, *Petitioners*,

vs.

SECURITY NATIONAL BANK, a corporation, *Respondent*.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
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Petitioners in Propria Persona.

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Petitioners believe that Respondent's act of requesting Dismissal of their Complaint in a Claim & Delivery procedure PRIOR to the time the Answer to the Complaint could be heard, is a major intervening circumstance (e.g., *Sanitary Refrigerator Co. v. Winters,* 280 U.S. 30, 34, footnote 1; *Massey v. United States,* 291 U.S. 608), of such importance as to alter Appellate Court's position that Claim & De-

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livery procedure should be "applied Prospectively." (See Appendix A for complete Appellate decision.)

CLAIM & DELIVERY PROCEDURE REQUIREMENTS OF BOTH CODE SECTIONS C.C.P. 509 AND 510

Former C.C.P. 509 is as follows:

509. CLAIM FOR DELIVERY: time.

DELIVERY OF PERSONAL PROPERTY, WHEN IT MAY BE CLAIMED. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this Chapter (Enacted in 1872).

Former C.C.P. 510 is as follows:

510. AFFIDAVIT—CONTENTS.

AFFIDAVIT AND ITS REQUISITES. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the

property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property. (Enacted 1872.)

Appendix B is Judgment requested by Respondent for Dismissal of their complaint prior to hearing of Complaint. Complaint contained Requisites & Verification as required by C.C.P. 510 of Claim & Delivery procedure.

C.C.P. 510 of the Claim & Delivery Act specified an AFFIDAVIT and its REQUISITES. Removal of complaint containing Affidavit voided the former Claim & Delivery Act thereby making the claim a NULLITY or inoperative. Therefore, respondent's claim to enforcement of Claim & Delivery act to be "prospectively applied" could only be operative in Claim & Delivery instances whereby the entire Claim & Delivery procedure had been completed.

Respondent is in possession of Petitioners' possessions without any verified claim and has thus violated their Constitutional Guarantees as follows:

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Fourth Amendment).

2. No person shall be deprived of life, liberty, or property, without due process of law. (Fifth Amendment).

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3. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Fourteenth Amendment).

4. The validity of a judgment may be affected by a failure to give the constitutionally required due notice and opportunity to be heard. (*Hanson v. Denckla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228; *Savariego v. Maverick,* 124 U.S. 261, 31 L.Ed 430, 8 S.Ct. 461).

CONCLUSION

Respondent's dismissal of their complaint invalidated the requirements of C.C.P. 510 of the Claim & Delivery procedure—under the heading "Affidavit and Its Requisites: Where a delivery is claimed, an *affidavit must be made by the plaintiff.*" (See full account above of C.C.P. 510). *This is a major Intervening Act* (e.g., *Sanitary Refrigerator Co. v. Winters,* 280 U.S. 30, 34, footnote 1; *Massey v. United States,* 291 U.S. 608) *of sufficient weight as to prevent the application of this Claim & Delivery request to be applied PROSPECTIVELY.* (See Appendix A). All of previous decisions under former Claim & Delivery cases contained all of the requirements of C.C.P. sections 509 and 510—of the Claim & Delivery procedure.

For the above reasons Petitioners pray that their request for a Petition for Rehearing on Petition for Writ of Certiorari be considered.

Dated, Oakland, California,
May 21, 1976.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners in Propria Persona.

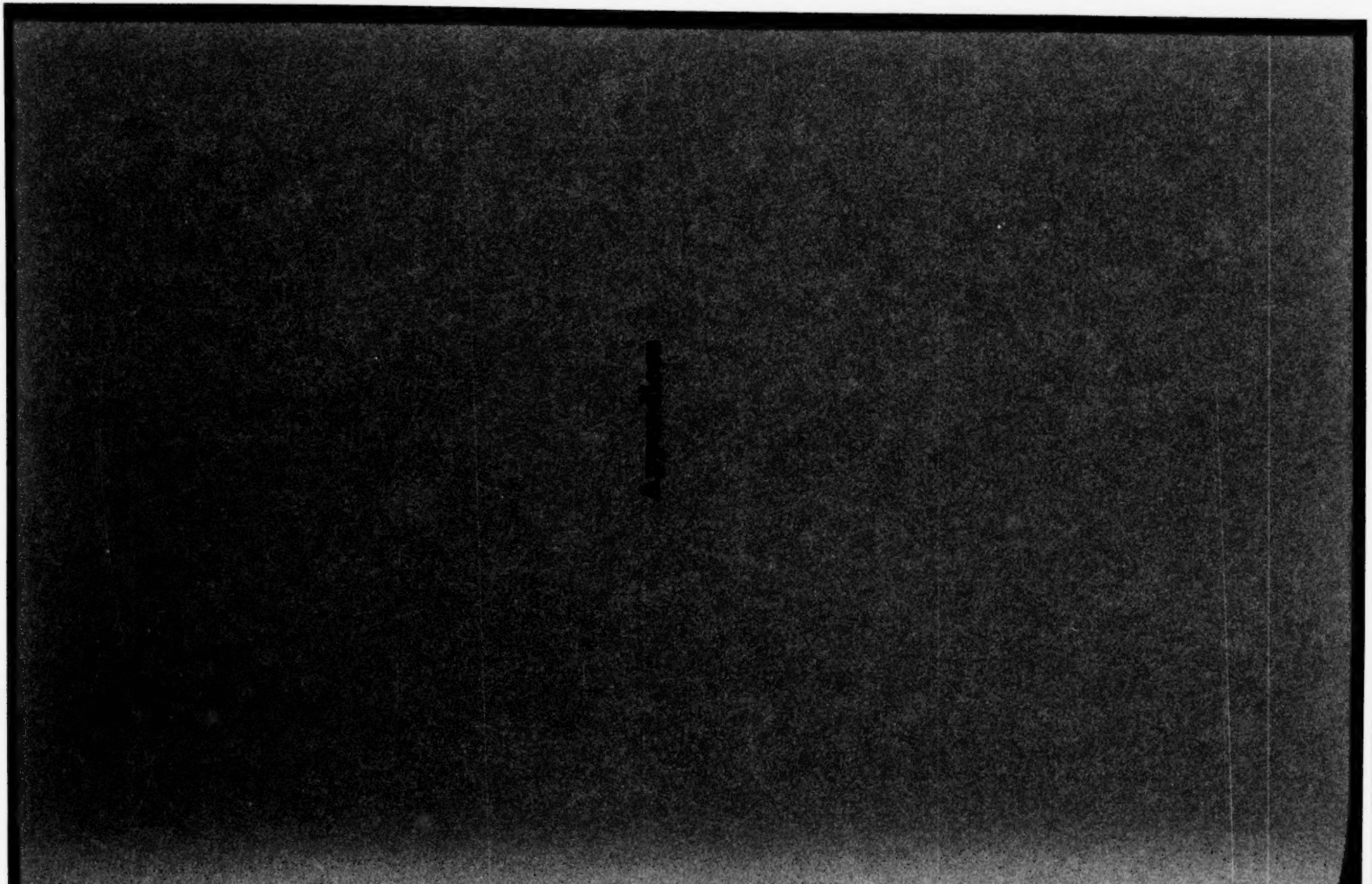
PETITIONERS' CERTIFICATE

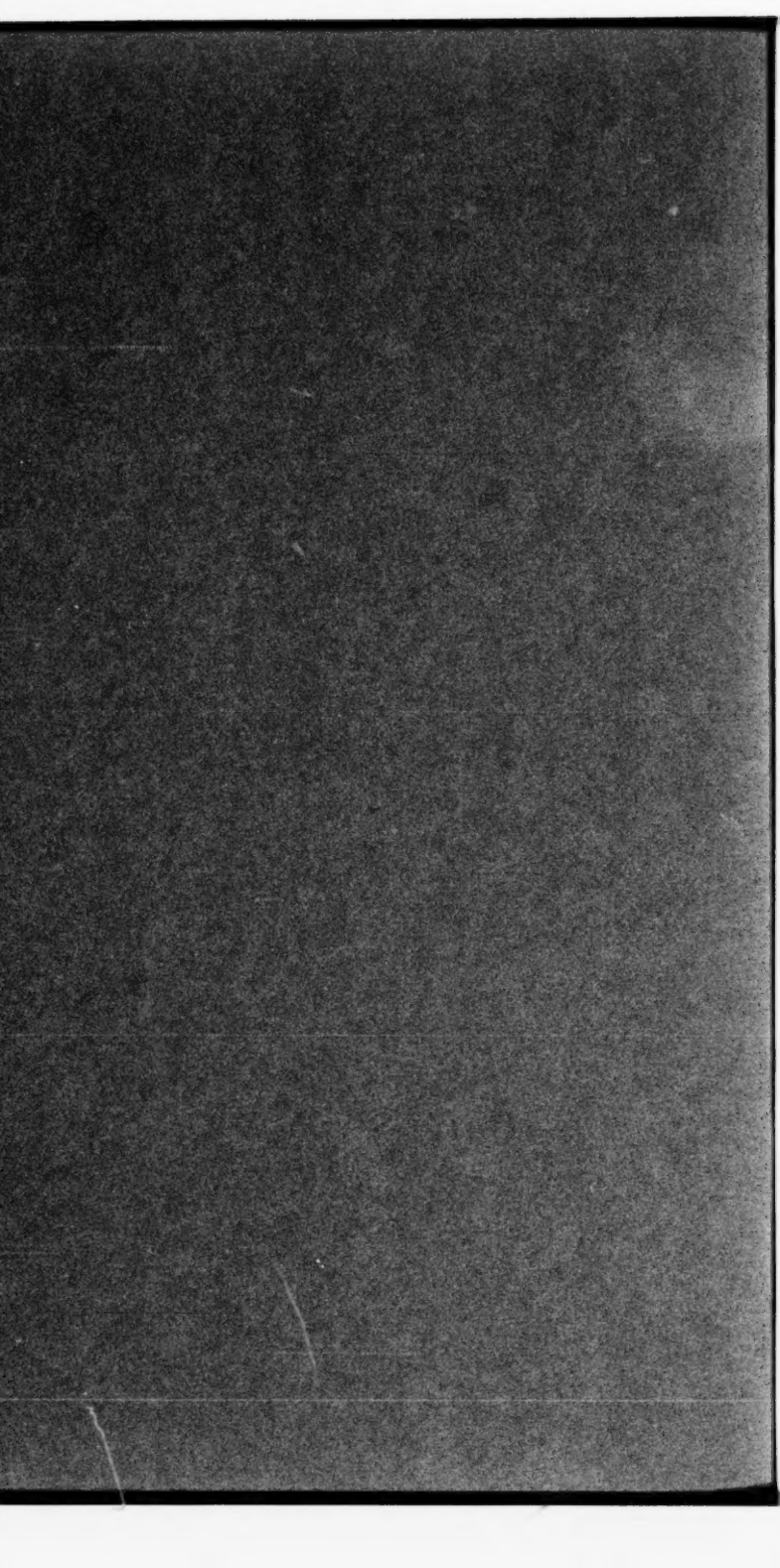
Petitioners William E. Crawford and Frances B. Crawford, his wife, state that this Petition for Rehearing on Petition of Certiorari is presented in good faith and not for delay, and also certify that the petition is restricted to the grounds above specified.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners.

(Appendices Follow)

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Appendix A

(NOT TO BE PUBLISHED IN OFFICIAL REPORTS)

In the Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 35893
(Sup. Ct. No. 376 939)

Security National Bank,
a corporation,
Plaintiff and Respondent,
vs.
William E. Crawford and
Frances B. Crawford,
Defendants and Appellants.

[Filed Nov. 17, 1975]

THE COURT:*

This is an appeal from a judgment of dismissal of plaintiff and respondent's remaining issues in his complaint in claim and delivery and defendants and appellants' cross-complaints and counterclaims. The sole issue before us on appeal is whether the decision in Blair v. Pitchess (1971) 5 Cal.3d 258, should be applied retroactively to void an execution of claim and delivery process in 1968.

The relevant facts may be briefly stated. Appellants and respondent's assignor, Abbey Rents, en-

*Before Taylor, P.J., Kane, J., and Rouse, J.

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tered into a conditional sales contract in June 1965 for the purchase of numerous items of equipment to be used in appellants' convalescent hospital. Following appellants' default, respondent instituted claim and delivery proceedings in February 1968 and repossessed the property. On July 1, 1971, the California Supreme Court declared unconstitutional the claim and delivery law (Code Civ. Proc., §§ 509-521) in Blair v. Pitchess, supra.

Appellants' contention was made to this court in EAC Credit Corp. v. Bass (1971) 21 Cal.App.3d 645, where a claim and delivery, executed in April 1969, was urged to be retroactively void under *Blair,* supra. We stated, at page 655: "*Blair v. Pitchess, supra,* was not retroactive and is to be applied prospectively.

"It enjoined the prospective application of the claim and delivery procedure [citation] in effect since 1872. [Citations.]"

Appellants' additional contention that the enactment of interim claim and delivery legislation in 1972 (Code Civ. Proc., §§ 509-521 [West Supp. 1974]) operates retroactively also fails. Our review of this legislation, as well as of the subsequent provisions (Code Civ. Proc., §§ 511.010-516.050 [effective July 1, 1974]) does not reveal a legislative intent that these provisions should apply retroactively. It is well settled that unless the Legislature clearly intends that legislation is to be given retroactive effect, it will be construed to apply prospectively (In re Rauer's Collection Co. (1948) 87 Cal.App.2d 248, 253).

Judgment affirmed.

Appendix B

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Attorneys for Plaintiff

Superior Court of California, County of Alameda

No. 376,939

Security National Bank,
a corporation,
Plaintiff,

vs.

William E. Crawford,
Frances B. Crawford,
Defendants.

[Filed June 10, 1974]

JUDGMENT

This matter appeared on the calendar of the Presiding Judge, June 5, 1974 having been set as the time for trial of the above-entitled action.

Charles L. Hemmings of Cox, Cummins & Lamphere, A Professional Corporation, appeared for plaintiff, Security National Bank. Defendant William E. Crawford, in propria persona, appeared for him-

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self and defendant Frances B. Crawford was also present in the Courtroom.

Mr. Hemmings asked leave of Court to dismiss the remaining issues concerning money damages prayed for in plaintiff's Complaint and to file a Request for Dismissal. The Court granted the request and ordered plaintiff's Complaint dismissed.

It appears to the Court that plaintiff made a motion for judgment on the pleadings and the motion was granted by a judgment dated January 15, 1970 and signed and filed January 26, 1970. An appeal from the judgment was filed by the defendants. The Court of Appeal on May 24, 1971 in 1/Civil 28406 reversed the judgment on the pleadings and allowed defendants leave to amend their pleadings.

It further appears that in August, 1971, defendants filed an amended answer which included two separate counterclaims, along with a cross-complaint for abuse of process and a cross-complaint for unfair competitive business tactics.

It further appears that the plaintiff Security National Bank filed a demurrer to these cross-complaints and counterclaims. On November 9, 1971 a judgment of dismissal was signed and filed with respect to the counter-claims and cross-complaints above-referred to.

An appeal was taken from the judgment of dismissal and on December 13, 1972 the Court of Appeal in 1/Civil 31227 dismissed the appeal on the grounds that the complaint was still pending and therefore the judgment of dismissal dated November

9, 1971 was not a final judgment from which an appeal would lie.

The defendants made a motion to advance the case for trial, which was granted, and the trial date June 5, 1974 was set by the County Clerk.

In this posture of the action, the counter-claims and cross-complaints could not be tried. As a recital of the foregoing proceedings in this action, and good cause appearing,

It Is Ordered, Adjudged and Decreed:

1. The request of plaintiff Security National Bank that its complaint be dismissed as to the remaining issue of money damages is granted and plaintiff's complaint is ordered dismissed as to all remaining issues.

2. The judgment of dismissal filed November 9, 1971 as to the defendants' two counter-claims and two cross-complaints is and is adjudged to be the judgment of the Court.

Dated: June 5, 1974 and presented for signature and signed June 10, 1974.

/s/ Spurgeon Avakian
Spurgeon Avakian
Judge of the Superior Court